

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	Civil Action No. 13-13300-ADB
CINSIA AND ALFONSO CIOLINO)	
Plaintiffs)	
)	
v.)	
)	
AARON EASTMAN,)	
DAVID EARLE,)	
GEORGE GIKAS,)	
Defendants)	
_____)	

PLAINTIFF'S MOTION FOR PARTIAL DIRECTED VERDICT

Plaintiff respectfully requests that the court direct a verdict in his favor on so much of the complaint as alleges there was no probable cause for an arrest. In support, plaintiff states that even in the light most favorable to the defendant there was insufficient objective evidence that the plaintiff acted as a disorderly person. Speaking three sentence is not a crime. Moving in the direction of a dog is not a crime. Even if the police subjectively believed this conduct amounted to inciting a crowd, objectively, it did not, and clearly was not intended to.

In support plaintiff relies on Commonwealth v. Feigenbaum, 404 Mass. 471 (1989) Commonwealth v. Gardner, 84 Mass. App. Ct. 1101 (2013) and Commonwealth v. Zettel, 46 Mass. App. Ct. 471 (1999). Commonwealth v. Chou, 433 Mass. 229, 232 (2001) In each case, a Massachusetts Appellate court reversed verdicts of “disorderly conduct” where the alleged conduct was equivalent or arguably more egregious than that testified to here. In Feigenbaum, the Commonwealth introduced evidence that the defendant blocked a tow truck and disregarded warnings to move, from which the jury would have been warranted in finding that the defendant

consciously disregarded a risk of public inconvenience, annoyance and alarm, and created a hazardous condition

Even so, the conviction was reversed because the Commonwealth offered no evidence to show that the defendant's actions were taken without legitimate purpose, and in fact they amounted to political protest.

Many other cases which uphold a finding require egregious conduct and proven disruption. See e.g. Commonwealth v. Sholley, 432 Mass. 731 (2000) (cert. den, 532 U.S. 980).

RESPECTFULLY SUBMITTED,

ALFONSO CIOLINO (by his atty.)

/s/ Robert S. Sinsheimer

Robert S. Sinsheimer
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CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of this document by electronic filing, on January 21, 2015, to all parties that participate in the ECF system and by first class mail to all parties not listed on the ECF system.

/s/ Wesley B. Stoker

Wesley Stoker, BBO No. 692159

Dated: January 21, 2015